

SECTION E
INSPECTION AND ACCEPTANCE

- E-1 INSPECTION OF CONSTRUCTION**
- E-2 PRE-FINAL AND FINAL INSPECTION**
- E-3 INSPECTION OF SERVICES**

E-1. INSPECTION OF CONSTRUCTION

(a) Definition. "Work" includes, but is not limited to materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under this contract conforms to contract requirements. The contractor shall maintain complete inspection records and make them available to the NAFI. All work shall be conducted under the general direction of the Contracting Officer and is subject to NAFI inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) NAFI inspections and tests are for the sole benefit of the NAFI and do not-

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the NAFI after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a NAFI or Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonable needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The NAFI may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The NAFI shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the NAFI not to conform to contract requirements, unless in the public interest the NAFI consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the NAFI may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the NAFI decides to examine already completed work by moving it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material for such effort. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the NAFI shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the NAFI's rights under any warranty or guarantee.

E-2. PRE-FINAL AND FINAL INSPECTION

(a) Pre-Final Inspection:

(1) In addition to the requirements in Section E-1 above, the Contracting Officer or his authorized representative and technical representatives will jointly conduct a pre-final inspection prior to a final inspection of the facility.

(2) The Contractor shall notify the Contracting Officer in writing when the entire project has been inspected by his design team and the project is ready for the Contracting Officer or his authorized representative to conduct a pre-final inspection. With this notification, the Contractor shall prepare and submit a list of items to be corrected or completed.

(3) Upon completion of the pre-final inspection, the Contracting Officer will transmit a punch list report to the Contractor listing discrepancies requiring correction or completion and establishing a date for the final inspection. Upon receipt of this punch list, the Contractor shall within seven (7) days advise the Contracting Officer of any questions that he or any of his subcontractors may have concerning the requirements of the report.

(b) Final Inspection:

(1) When all pre-final inspection discrepancies have been corrected, the Contractor shall submit a written request for final inspection to the Contracting Officer at least fourteen (14) days before the desired date of inspection.

(2) The Contracting Officer or his authorized representative will conduct the final inspection with his Technical Representative(s), the Contractor, and any needed subcontractor to determine whether the project can be finally accepted upon written notice from the Contractor that the re-inspection punch list items are complete.

(c) Re-Inspection:

(1) If, upon the first re-inspection, it is found that punch list items or other discrepancies are not sufficiently complete that the Project can be finally accepted, the Contractor shall be responsible for the NAFI's costs for additional technical services for preparation of a new punch list and any subsequent re-inspection prior to final acceptance. The NAFI's costs for additional services will be charged to the Contractor through an appropriate change order to recover applicable reimbursable expenses for activities involved in the re-inspection (this includes, but is not limited to, A-E expenses incurred by the NAFI).

(2) Upon written notice from the Contractor that the re-inspection punch list items are complete, the Contracting Officer or his authorized representative will conduct the final inspection to verify that the discrepancies have been completed and determine whether the project can be finally accepted.

E-3. INSPECTION OF SERVICES

(a) The Contractor shall provide and maintain an inspection system acceptable to the NAFI covering the services under this contract. Complete records of all inspection work performed by

the Contractor shall be maintained and made available to the NAFI during contract performance and for as long afterwards as the contract requires.

(b) The NAFI has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The NAFI shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the NAFI performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(d) If any of the services do not conform to contract requirements, the NAFI may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the NAFI may-

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the NAFI may-

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the NAFI that is directly related to the performance of such service; or

(2) Terminate the contract for default.

END OF SECTION E

SECTION F

DELIVERIES OR PERFORMANCE

- F-1 COMPLETION TIME**
- F-2 LIQUIDATED DAMAGES**
- F-3 PERFORMANCE EVALUATION OF THE CONTRACTOR**

F-1. COMPLETION TIME

The contractor shall complete the work within the time periods outlined in Section B.

F-2. LIQUIDATED DAMAGES

a. If the Contractor fails to complete the work within the time specified in this contract, the Contractor shall pay liquidated damages to the NAFI in the amount of \$_____ for each calendar day of delay until the work is completed and accepted.

b. If the NAFI terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of reprourement under the Termination clause.

F-3. PERFORMANCE EVALUATION OF THE CONTRACTOR

a. At a minimum, the Contractor's performance will be evaluated upon final acceptance of the work. However, interim evaluation may be prepared at any time during contract performance when determined to be in the best interest of the NAFI.

b. The Contractor will be rated either outstanding, satisfactory, or unsatisfactory in the areas of Contractor Quality Control, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, and Compliance with Safety Standards. The Contractor will be advised of any unsatisfactory rating, either in an individual element, or in the overall rating, prior to completing the evaluation, and any overall comments will be made a part of the official record.

END OF SECTION F

SECTION G

CONTRACT ADMINISTRATION DATA

- G-1 ADDRESS FOR PAYMENT**
- G-2 INVOICES AND PAYMENTS**
- G-3 CONTRACT ADMINISTRATION**
- G-4 MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER**
- G-5 EFT VENDOR PAYMENT ENROLLMENT FORM**

G-1. ADDRESS FOR PAYMENT

Contractor is requested to indicate below the address to which payment should be mailed, if such address is different from the one shown on page one (SF33) of this contract.

(Name)
(Street Address)
(City, State, Zip)
(Area Code)(Telephone Number)

G-2. INVOICES AND PAYMENTS

Progress payments to the Contractor are authorized on a monthly basis in accordance with Section I, Contract Clause entitled Prompt Payment for Construction Contracts. The Contractor shall submit the following itemized applications for payment, using AIA Form G-702 and G-703,

(a) The original and two copies to:

CNIC, Facilities and Acquisition
Attn: Resource Manager
5720 Integrity Drive
Millington, TN 38055

(b) *One copy shall be furnished to the Project Manager during the Design phase:*

(Insert Name), Project Manager
CNIC, Facilities and Acquisition
5720 Integrity Drive
Millington, TN 38055

(c) *One copy shall be furnished to the Contracting Officer's Representative during the Construction phase:*

TBD

G-3. CONTRACT ADMINISTRATION

(1) Contracting Officer: This contract will be administered by a Contracting Officer assigned to the Commander, Navy Installations Command, Code N944C.

(2) Contracting Officer's Authority: The Contracting Officer is the only person authorized to approve changes to any of the requirements under this contract, and notwithstanding any provision contained elsewhere in this contract, said authority remains solely with the Contracting Officer. In the event the Contractor effects any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been without authority and no adjustment will be made in the contract price to cover any increase in charges incurred as a result thereof. The name and address of the Contracting Officer is as follows:

(Insert Name)
Tel: (901) 874-*(Insert extension)*
FAX: (901) 874-6824
E-mail: *(Insert Email address)*

(3) Contracting Officer's Representative: The Contracting Officer may designate one (1) or more Contracting Officer's Representative(s) (COR) for the purpose of surveillance of the

contractor's quality control and assurance activities for work being performed under this contract. No inspector or COR is authorized to change the terms and conditions of this contract or any provision of the specifications nor shall the presence or absence of an inspector or COR relieve the Contractor from any requirements of the contract.

G-4. MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER

(a) Method of Payment. All payments by the NAFI under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (b) of this clause.

(b) Exceptions to the EFT are as follows:

- (1) Contracts awarded to companies located OCONUS
- (2) Contracts denominated or paid in other than U.S. currency
- (3) Classified contracts when such payments would compromise national security
- (4) Contracts executed by deployed Contracting Officers in the course of military operations
- (5) Contracts executed by any Contracting Officer in the course of emergency operations, e.g., responses to natural disaster or national or civil emergencies

(c) Mandatory submission of Contractor's EFT information

- (1) The contractor is required to provide the payment office with information required to make payment by EFT on form in Section J.
- (2) Any changes to the contractor's original information, to include the closure of account, must be provided to the payment office at least 30 days prior to the effective date of payment

(d) Mechanisms for EFT payment. The NAFI may make payments by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association.

(e) Suspension of payment

- (1) The NAFI is not required to make any payment under this contract until after receipt by the designated office of the correct EFT payment information from the contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (2) If the EFT information changes, the NAFI shall begin using the new information no later than 30 days after receipt by the designated office. However, the contractor may request that no further payments be made until the payment office implements the updated EFT information. If such suspension would result in a late payment under the prompt payment terms of this contract, the contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) Liability for uncompleted or erroneous transfers.

- (1) If an uncompleted or erroneous transfer occurs because the NAFI used the contractor's EFT information incorrectly, the NAFI remains responsible for
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the contractor's EFT information was incorrect, and

- (i) If the funds are no longer under the control of the payment office, the NAFI is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the NAFI shall not make payment and the provisions of paragraph (e)(2) shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if the date specified for settlement of the payment is on or before the prompt payment due date.

(i) EFT and assignment of claims. If the contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (c) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor.

(h) Liability for change of EFT information by financial agent. The NAFI is not liable for errors resulting from changes to EFT information provided by the contractor's financial agent.

G-5. EFT VENDOR PAYMENT ENROLLMENT FORM

It is **mandatory** that the awarded contractor complete and return the form in Section J **(Insert specific attachment #)** for electronic deposits. The contractor is not required to provide the signature of the official nor the title of the official on the form. For more detailed information, please call Resource Manager, (901) 874-6669.

END OF SECTION G

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H-1	STATEMENT OF INTENT
H-2	TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER
H-3	PROJECT SIGNAGE
H-4	BULLETIN BOARD
H-5	SCHEDULED OUTAGES
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H-24	CONTRACTOR-PREPARED PROGRESS SCHEDULE

H-1. STATEMENT OF INTENT

It is the declared and acknowledged intention and meaning to obtain a complete and useable, aesthetically pleasing _____. The facility is to be of standard commercial quality, which will operate efficiently and remain free of unreasonable failure and defects throughout its intended life span. This is a Navy Nonappropriated Fund (NAF) procurement and is not funded by any Appropriated Funds of the United States. No appropriated funds of the United States shall be obligated, due or payable as a result of this contract.

H-2. TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

This provision specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default (Fixed-Price Construction)." The Contractor shall ensure that the project schedule allows for normal weather patterns in the geographic area in which the work will be performed. The National Oceanic and Atmospheric Administration (NOAA) may provide some information for the geographic location of the project and usual weather patterns. Unless the contractor can prove to the Contracting Officer's satisfaction that extreme unusual weather patterns were encountered during the construction phases of the project and that this extremely unusual weather could not reasonably have been expected to occur or avoided, claims for weather related delays will not be approved.

H-3. PROJECT SIGNAGE

The Contractor shall furnish and install a project sign at the location selected by the Contracting Officer or the duly appointed representative. The sign layout shall be in accordance with the graphic format provided in Section J.

H-4. BULLETIN BOARD

Immediately upon beginning of work under this contract, the Contractor shall provide at the job site a weatherproof glass covered bulletin board for displaying the fair employment poster, wage rates, and safety bulletins and posters. Emergency telephone numbers and reporting instructions for ambulance, physician, hospital, fire and police shall be posted. The bulletin board shall be located in a conspicuous place easily accessible to all workers at the job site, including the public. Legible copies of the aforementioned data shall be displayed until all work under the contract is completed.

H-5. SCHEDULED OUTAGES

5-1 All outages, including but not limited to utility interruptions and road closures, shall be of as short in duration as possible and shall be requested by the Contractor in writing, as far in advance as possible with the COR. In no case shall scheduling occur less than fifteen (15) days prior to the required outage. The Contractor shall obtain required utility outage request forms from the COR and the Contractor shall include the following:

- (1). Type of utility, access or service to be disrupted
- (2). Areas and/or facilities affected
- (3). Expected duration of outage
- (4). Date of proposed outage
- (5). Names of authorized personnel
- (6). Point of contact and telephone numbers

5-2 The Contractor shall obtain in writing from the COR a statement of schedule, giving the permissible times of outages for particular installations or activities and the maximum time allowed for each outage. Any utility outage expected to exceed one (1) hour in duration shall be scheduled for the weekend (Saturday/ Sunday) and shall not exceed six (6) hours in duration. Any utility outage scheduled during the week (Monday through Friday) shall not exceed one (1) hour in duration. No outage shall occur until written approval is received from the Contracting Officer. The Contractor shall strictly observe

such schedules and will be held responsible for any violations. The Contractor shall include with each outage request a list or bill of materials and equipment that will be used during said outage. The Contractor will be solely responsible for ensuring that all materials and equipment will be on hand and ready for use during any scheduled outage.

H-6. CONTRACTOR'S AREA USE PLAN

The Contractor shall submit an Area Use Plan to the COR, for approval, within thirty (30) days after receipt of Notice to Proceed. The Area Use Plan shall show the following:

- (1). Location of Contractor sheds and trailers
- (2). Location of all Contractor storage areas
- (3). Location of Contractor staging areas
- (4). Temporary utility tie-ins
- (5). Location of required Contractor security fencing.
- (6). Required telephone service and locations

H-7. CONSTRUCTION DEBRIS REMOVAL AND DISPOSAL

The construction refuse materials shall be disposed of off the installation in a manner that meets all federal, state and local legal requirements. Disposal of construction refuse material is the obligation of the Contractor and neither the installation nor any of the Navy refuse disposal resources shall be used.

H-8. COORDINATION CONFERENCES

Routine coordination conferences will be scheduled by the Contracting Officer or the duly appointed contracting officer's representative throughout the life of this contract. Coordination conferences will be held to discuss contract administration, Contractor quality control, phasing, scheduling, and other aspects relating to this construction. The Contractor will be required to send a qualified representative to be present at each of these meetings.

H-9. CONTRACTOR MAINTENANCE

At the end of each working day the Contractor shall police the work area and the area immediately surrounding the work area of all work-related debris. The Contractor shall comply with all applicable safety requirements and shall conduct his operations in a manner to ensure an accident-free environment. Stacked materials shall not be within 25 feet of an active roadway.

H-10. REQUIRED INSURANCE

a. In accordance with Section I, Contract Clause I-19, the Contractor shall procure and maintain during the entire period of his performance under this contract the following types of insurance; in no less than the minimum amounts set forth herein:

- (1) Workman's Compensation and all occupational diseases --- As required by State law.
- (2) Employer's liability including all occupational diseases when not so covered in Workman's Compensation above --- \$100,000 per accident.
- (3) General Liability (Comprehensive Bodily Injury and Property Damage) --- \$2,000,000.00
- (4) Automobile Liability (Comprehensive)
Bodily Injury per person ----- \$200,000
Bodily Injury per occurrence ----- \$500,000
Property Damage per accident ----- \$ 20,000
- (5) Professional Liability Insurance General Coverage (errors and omissions) in an amount no less than --- \$500,000

b. The Contractor shall be fully responsible to the NAFI for his associates, subcontractors and its professional consultant's work under this contract.

c. Each certificate of insurance shall list the NAFI which is a party to this contract as an additionally insured party.

H-11. PHYSICAL DATA

Data and information furnished or referred to below are furnished for the Contractor's information. The NAFI will not be responsible for and interpretation or conclusion drawn from the data or information by the Contractor.

a. Physical conditions when indicated on the drawings and in the specifications are the result of site investigations, by surveys, borings, test pits and probings. The contractor shall also verify all measurements provided as any such information provided in the contract is for reference only and may not be the actual measurements, quantities, load or other descriptor so provided.

b. Weather Conditions: The Contractor shall make his own investigations as to weather conditions at the site. Data may be obtained from various National Weather Service offices located generally at airports of principal cities. Historical data for all areas may be obtained from the U.S. Department of Commerce. The contractor should check with the office nearest to the project work site. NOAA may also have useful information for the contractor's consideration.

c. Transportation Facilities: Access ways shall be investigated by the Contractor to satisfy himself of their existence and allowable use.

H-12. RESPONSIBILITY OF THE CONTRACTOR

a. All design documents shall be prepared and seals affixed thereto by architect-engineers registered or temporarily authorized to practice in the professional discipline involved in the State where the project is located.

b. The Contractor shall be responsible for the professional quality, technical accuracy and the coordination for all design, drawings and specifications furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings and specifications. In addition, the Contractor shall construct the project without additional compensation, in accordance with such corrected or revised designs, drawings and specifications.

c. Neither the NAFI's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract, and the Contractor shall be and remain liable to the NAFI in accordance with applicable law for all damages to the NAFI caused by the Contractor's negligent acts or omissions in connection with designs, drawings and specifications furnished under this contract.

H-13. DESIGN DISCREPANCIES

In the event design discrepancies or omissions become apparent during construction, the Contractor shall be responsible for correction of the design and shall furnish the necessary drawings, specifications, and other support data as required to resolve the condition to the satisfaction of the Contracting Officer. The Contractor shall further perform all work necessary to execute the correct design. The full cost of all such corrective work shall be borne by the Contractor.

H-14. SAFETY

The Contractor shall comply with OSHA (Occupational Safety And Health Act) Standards for design and construction of this facility and the latest edition of the US Army Corps of Engineers' SAFETY AND

HEALTH REQUIREMENTS MANUAL, EM 385-1-1. Safety and Occupational Health Requirements shall be per UFGS 01525, modified to state that the Site Safety and Health Officer (SSHO) **cannot be the site superintendent**. The SSHO shall meet the Level 5 requirements, with competent person status for Fall Protection, Scaffolding, Hazardous Energy, and Cranes. Also see Section I, clause entitled ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION, and the Safety Requirements in Section C.

With the 50% design submittal, the contractor shall provide the COR a comprehensive Construction Safety plan to cover all safety requirements associated with this project. Include in the safety plan the name of the individual responsible for daily safety inspections and taking corrective action.

The safety plan shall include a list of all hazardous chemicals and their Material Safety Data Sheets (MSDS) that will be used during construction.

The safety plan shall include a list of all hazardous waste (defined in 40 CFR, Part 261) and estimated quantities that will be generated during the work of this project. Include contact information and certifications for the organizations that will transport and dispose of hazardous wastes generated. If the contractor determines that no hazardous waste will be generated during the work of this project, the contractor shall include a statement to that effect with the Safety Plan.

The Contractor's Construction Safety plan for this project shall specifically address safety measures to be taken during connection operations for the sanitary sewer system. Coordinate with PWC regarding known hazards associated with this operation and preventative measures to be taken.

H-15. ARCHAEOLOGICAL FINDINGS DURING CONSTRUCTION

There are no known archaeological remains at the project site. Should any skeletons, artifacts, or other archaeological remains be uncovered, the Contractor shall suspend operations at the site of discovery and continue operations in other areas. The Contractor shall notify the Contracting Officer's Representative and the Contracting Officer immediately of the finding. Included with the notification shall be a brief statement to the Contracting Officer of the location and the findings. Should the discovery site require archaeological studies resulting in delays and/or additional work, the Contractor will be compensated by an adjustment under Section I of the contract.

H-16. RECORD (AS-BUILT) DRAWINGS

a. At least 14 days prior to the pre-final inspection, the Contractor shall prepare and submit to the Contracting Officer two (2) full size and three (3) half size bound copies of the complete set of as-built project drawings on bond paper, five (5) copies of the specifications in 3-ring binders, and five (5) virus-free CDs of the electronic as-built drawings (in the latest version of AutoCAD) and specifications (in latest version of MS Word) along with a PDF of the complete set of as-built drawings and specifications. Documents shall be neatly marked to show an accurate "as-built" record of construction. If the "as-built" drawings have to be redone as a result of the pre-final inspection, the Contractor shall prepare and submit new "as-builts" to the Contracting Officer.

- (1) Changes and corrections entered on the documents shall be indicated by a lettered circle and noted as "Record Drawings" in the revision space provided. If no revisions or corrections are necessary on individual drawings, insert the notation "Record Drawing - No Changes" in or below the revision block.
- (2) Neatly mark specifications to indicate names of products and manufacturers incorporated in the project.

b. The Contractor shall carefully mark drawings during construction to accurately locate elements that will be concealed when the project is completed. Carefully measure and show dimensions of all concealed work including, but not limited to, piping, electrical services, and conduit.

c. The As-Built drawings shall also show the location and description of any utility lines or other installations known to exist within the construction area. The location and description of exterior utilities,

including measured horizontal distances from utilities to permanent facilities/features shall be shown. Measurements shall be within an accuracy range of six (6") inches and shall be shown at sufficient points to permit easy location of utilities for future maintenance purposes. Measurements shall show all change-in-direction points and all surface and underground components (i.e., valves, manholes, drop inlets, cleanouts, meters, etc.). The general depth range of each underground utility line shall be shown (i.e., 3' - 4' depth, etc.). A complete description of all exterior utilities shall include the actual quantities, sizes, and materials.

H-17. RIGHTS IN SHOP DRAWINGS

a. The term "shop drawings" for construction means drawings, submitted by the construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. The NAFI may obtain, duplicate, use, and disclose in any manner and for any purpose shop drawings developed and used in the performance of this contract.

b. This clause, including this paragraph b, shall be included in all subcontracts hereunder at any tier.

H-18. RIGHTS IN DATA -- SPECIAL WORKS

(a) Definitions. As used in this clause--

"Data" means recorded information, regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Unlimited rights" means the rights of the NAFI to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The NAFI shall have--

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright--

(1) Data first produced in the performance of this contract.

(i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of NAFI sponsorship (including contract number) to the data when delivered to the NAFI, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the NAFI, and others acting on its

behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the NAFI.

(ii) If the NAFI desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the NAFI or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the NAFI, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. The Contractor shall indemnify the NAFI and its officers, agents, and employees acting for the NAFI against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the NAFI provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the NAFI and incorporated in data to which this clause applies.

H-19. INVENTORY OF INSTALLED EQUIPMENT

A list of equipment or units of equipment that require electrical power or fuel, or may require removal or replacement, such as air handling units (AHU's), fans, air conditioners, compressors, unit kitchens, condensers, boilers, thermal exchanges, pumps, cooling towers, tanks, fire hydrants, etc., shall be made and kept up-to-date as installed. The list will be reviewed periodically by the NAFI to ensure completeness and accuracy. Partial payment may be withheld at the discretion of the Contracting Officer for equipment not incorporated in the list. The list shall include on each item as applicable: description, manufacturer, model or catalog number, serial number, input (power voltage, BTU's, tons, etc.), size or capacity (tanks) and net inventory costs; any other data necessary to describe item. Final list shall be turned over to the authorized representative of the Contracting Officer two (2) weeks prior to final inspection. Provide two disks or CDs with the list in Excel or Access format.

H-20. EXTENDED WARRANTIES

In addition to the requirements outlined in Section I, contract clause entitled WARRANTY OF CONSTRUCTION, the Contractor shall provide extended warranties which run from the time of acceptance for the periods indicated in the various technical requirements of Section C.

H-21. SCHEDULE OF VALUES FOR INSTALLED FIXTURES AND FURNISHINGS

The Contractor shall prepare and provide to the Contracting Officer or his authorized representative a schedule of values listing all Contractor furnished and installed fixtures and furnishings. The schedule shall include as applicable: item description; quantity; gross acquisition cost; manufacturer; model or catalog number; and any other data necessary to describe the item. Said schedule shall be included and submitted at the 50% and 100% Design Reviews.

H-22. OPERATION AND MAINTENANCE DATA

a. At least 14 days prior to the final inspection, the Contractor shall prepare and submit to the Contracting Officer three (3) complete sets of information describing the operation and maintenance of all systems and equipment. The information shall be in 8 1/2" x 11" three-ring binders with durable plastic covers with the words "Operation and Maintenance Manual" and the name and address of the project, Contractor, and architect/engineer(s) neatly and permanently marked on the cover.

b. Information shall be organized and subdivided in sections on the basis of operation without regard to construction trades, subcontractors, or specification sections. Each section shall be neatly tabbed and identified for easy reference.

c. The operation and maintenance manuals shall contain, as a minimum:

- (1) Complete list of subcontractors noting applicable specification section, item of work, subcontractor's name, address, telephone number, and the name of the person to contact.
- (2) Schedule of values of construction work incorporating costs of any change orders.
- (3) Manufacturer's recommendations for operation and maintenance of all equipment and systems including charts, diagrams, performance curves, catalog data, and maintenance manuals.
- (4) Manufacturer's recommendations for use and maintenance of all finish materials.
- (5) Original and one copy of all warranties, guarantees, and bonds.

H-23. SYSTEMS DEMONSTRATION

a. Prior to final inspection the Contractor shall demonstrate the operation of each mechanical, electrical, plumbing, communication, equipment and specialties system to the Contracting Officer and/or his representatives. The Contractor shall also instruct the Government, the MWR, the BCE and the PWD personnel in the operation, adjustment and maintenance of all equipment and systems using the operation and maintenance manual as the training basis.

b. Upon completion of the training session, the Contractor shall prepare a certificate indicating the date of instruction, the system or equipment involved, and a statement that the instruction was sufficient to explain the requirements for proper operation and/or maintenance. The certificate shall be signed by the Contractor, the individual providing the instruction, and the Government or the MWR, the BCE and the PWD personnel receiving the instruction. These certificates shall be submitted to the Contracting Officer with the Contractor's application for final payment.

H-24. CONTRACTOR-PREPARED PROGRESS SCHEDULE

a. In accordance with Section I Contract Clause entitled "Schedules for Construction Contracts," the Contractor shall submit as part of his initial design submittal, a critical path progress schedule showing the manner in which he intends to prosecute the work.

b. Preparation: The progress schedule shall be prepared in the form of time-scaled (Gantt Chart) summary network diagram graphically indicating the sequence proposed to accomplish each work operation and appropriate inter-dependencies between the various activities. The chart shall show the starting and completion dates of all activities on a linear horizontal time scale beginning with the dates of Notice to Proceed and indicating calendar days to completion. Each significant activity in both design and construction phases of the project shall be represented and a cost for the activity indicated. The sum of the activity costs will total to the contract amount for the project. The Contractor shall indicate on the chart the important work activities that are critical to the timely overall completion of the project. Key dates for important features or portions of work features are milestone dates and shall be indicated on the

chart. Based on this chart, the Contractor shall prepare an earnings-time curve ("S" curve) showing the rate of progress in terms of money and percent completion. Schedule progress may not include the value of materials or equipment delivered to the job site but not yet incorporated into the work. This schedule shall be the medium through which the timelessness of the Contractor's construction effort is appraised, and periodic payment estimates are processed pursuant to the Contract Clauses.

c. The Contractor shall participate in a review and evaluation of the proposed diagram and analysis with the Contracting Officer. Any revision necessary as a result of this review shall be resubmitted for approval of the Contracting Officer within ten (10) calendar days after the conference. The approved network and mathematical analysis will then be used by the Contractor for planning, organizing and directing the work, for reporting progress and for requesting payment for work accomplished.

d. The initial and subsequent update submittal of the progress schedule shall be summarized on one sheet, maximum size of 30 by 42 inches.

e. Failure by the Contractor to maintain adequate progress in accordance with the progress schedule may result in withholding of progress payments, as determined by the Contracting Officer.

END OF SECTION H

**SECTION I
CONTRACT CLAUSES
(NONAPPROPRIATED FUND CONSTRUCTION, ALTERATION AND REPAIR CONTRACTS)**

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I-1. DEFINITIONS

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary of the Navy, the Under Secretary, and the term "authorized representative" means any person or board (other than the Contracting Officer) authorized to act for the head of agency or secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated is a party to his contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) "Commercial Item" means a product or a service (e.g., items, supplies, materials, components) sold or traded to the general public in the course of conducting normal business operations at established catalog or market prices.

(d) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

I-2. NONAPPROPRIATED FUND INSTRUMENTALITY

The Non Appropriated Fund Instrumentality (NAFI) that is party to this contract is a nonappropriated fund instrumentality of the Department of the Navy. No appropriated funds of the United States shall become due or be paid the contractor by reason of this contract. This contract is NOT subject to the Contract Disputes Act of 1978. References to the United States, the Government and other related references will generally be implied to mean the NAFI throughout this contract.

I-3. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the NAFI shall have the right to void this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4. CHANGES--CONSTRUCTION

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the general scope of this contract including changes-

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the NAFI-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer a timely written notice expressly stating (1) the date, circumstances, and source of the order and (2) a clear and unambiguous statement that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required above. In the case of defective specifications for which the NAFI is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the NAFI. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

The preceding paragraphs do not apply to contracts for architect-engineer or other professional services. In all contracts for architect-engineer or other professional services, the following paragraphs apply:

(g) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(h) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

I-5. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS

Any subcontractors and outside associates or consultants utilized by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified in proposals or agreed to during negotiations. Any substitution of such contractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

I-6. SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

(a) Definitions. As used in this clause –

“Commercial item” has the meaning contained in the clause Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the contractor is not required to include any provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components.

- (1) Equal Opportunity (EO 11246);
- (2) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a)); and
- (3) Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

(d) The contractor shall include the terms of this clause, including this paragraph (d), in subcontractors awarded under this contract.

I-7. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I-8. GRATUITIES

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., entertainment or gift) to an officer, official, or employee of the United States or the NAFI; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) If this contract is terminated under paragraph (a) above, the NAFI is entitled to pursue the same remedies as in a breach of the contract.

(c) The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-9. MATERIAL AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, articles, or processes that, in the

judgment of the Contracting Officer, are equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles that the Contractor contemplates incorporating in the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor removes from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

I-10. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I-11. EXAMINATION OF RECORDS

(a) The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in (a) above, in all subcontracts.

I-12. CONVICT LABOR

(a) Except as provided in paragraph (b) of this clause, the contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The contractor is not prohibited from employing persons –

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if –

(i) The worker is paid or is in an approved work-training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**I-13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME
COMPENSATION (Applicable to construction contracts of \$2,000 or more)**

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any work week unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the NAFI. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other NAF contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the NAFI until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

I-14. EQUAL OPPORTUNITY

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the NAFL to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I-15. PROHIBITION OF SEGREGATED FACILITIES

(a) "Segregated facilities", as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I-16. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as -

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and;

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I-17. BUY AMERICAN ACT-CONSTRUCTION MATERIALS

(a) Definitions. As used in this clause -

"Component," means any article, material, or supply incorporated directly into construction materials.

"Construction material," means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as a complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site. Materials purchased directly by the NAFI are supplies, not construction material.

"Cost of components" means – (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Designated country" means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan, Kiribati, Korea, Republic of Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mail, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

"Designated country construction material" means a construction material that – (1) Is wholly the growth, product, or manufacture of a designated country; or (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

"Domestic construction material," means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"North American Free Trade Agreement Country" means Canada or Mexico.

"North American Free Trade Agreement Country Construction Material" means a construction material that (1) is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 states and the District of Columbia, U.S. Territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the NAFI as follows: None

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the NAFI determines that –

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for NAFI evaluation of the request, including –

- (a) A description of the foreign and domestic construction materials
- (b) Unit of measure
- (c) Quantity
- (d) Price
- (e) Time of delivery or availability
- (f) Location of the construction project
- (g) Name and address of the proposed supplier; and
- (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any contractor request for a determination submitted after contract award shall explain why the contractor could not reasonable foresee the need for such determination and could not have requested the determination before contract award. If the contractor does not submit a satisfactory explanation, the contracting officer need not make a determination.

(2) If the NAFI determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the contractor negotiate adequate consideration, the contracting officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the NAFI determines that an exception of the Buy American Act or the Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) Data. To permit evaluation of requests under paragraph © of this clause based on unreasonable cost, the contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price
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Item 1

Foreign construction material			
Domestic construction material			

Item 2

Foreign construction material			
Domestic construction material			

*Include all delivery costs to the construction site and applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

I-18. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of Treasury. Those countries include Cuba, Iran, Iraq, Libya and North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts hereunder.

I-19. INSURANCE WORK ON A GOVERNMENT INSTALLATION

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract. In no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the State in which the contract is to be performed prescribed at (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in this Schedule or elsewhere in the contract. The contractor shall maintain a copy of all subcontractors' proof of required insurance, and shall make copies available to the Contracting Officer upon request.

I-20. TAXES

(a) Except as may be otherwise provided in this contract, the contract price includes all taxes, duties, or other public charges in effect and applicable to this contract on the contract date, except any tax, duty or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf: or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(b) If for any reason, after the contract date of execution, the Contractor or subcontractor is relived in whole or in part from the payment or the burden of any tax, duty or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

(c) No adjustment of less than \$500 shall be made in the contract price pursuant to this clause.

(d) With respect to foreign taxes, NAFI's located in foreign countries will not pay to nor collect for any foreign country or political subdivision any tax unless the United States has consented to levy collection by treaty, convention, or executive agreement.

I-21. EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless the Contracting Officer has authorized such extras and the price is in writing.

I-22. PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS

a. Notwithstanding any other payment terms in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays).

(1) Invoice Payments. – Types of invoice payments. For purposes of this clause, there are several types of invoice payments, which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract and not more frequently than monthly, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause entitled, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the NAFI arising by virtue of the contract, and payments for partial deliveries that have been accepted by the NAFI (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after NAFI acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date and identification number. (The contractor is encouraged to date invoices as close as possible to the date of mailing or transmission and to assign an identification number to each invoice).

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause entitled Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and NAFI business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) A receiving report or other NAFI documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611, however other provisions of the Act are not applicable to NAFIs - see Disputes Clause) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principle payment amount approved by the NAFI until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principle payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this

adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, NAFI acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause entitled, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the NAFI and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause entitled, Disputes.

(5) Prompt payment discounts. An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(i) A penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)

(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)

(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except—

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are

consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments—

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract-financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) (otherwise CDA does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the NAFI but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the NAFI because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the NAFI;
or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal

Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise the CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon—

- (i) Reduction of the amount of any subsequent certified application for payment;
- or
- (ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to NAFI. Be obligated to pay to the NAFI an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the NAFI until—

- (i) The day the identified subcontractor performance deficiency is corrected; or
- (ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports—

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise CDA of 1978 does not

apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the NAFI of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the NAFI is a party. The NAFI may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the NAFI for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

I-23. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

(a) Definitions. As used in this clause—

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainee at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor—

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

- (2) Submit reports as may be required by the Government/NAFI; and
- (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

I-24. ASSIGNMENT OF CLAIMS

The contractor cannot assign any right or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

I-25. NONWAIVER OF DEFAULTS

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

I-26. DISPUTES

(a) This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Navy for NAF contracting.

(b) The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract forms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause. If it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that-

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by-

(A) A senior company official in charge at the Contractor's plant or location involved, or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(f) For contract claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the contractor appeals as provided in paragraph (h) of this clause.

(h) The Contracting Officer's final decision on claims may be appealed by submitting a written appeal to Commander, Navy Installations Command (CNIC), within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Commander, Navy Installations Command are final and are not subject to further appeal.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-27. PROPERTY RECORDS

The NAFI shall maintain the NAFI's official property records in connection with NAFI property under this contract. Deleting the requirement for the contractor to maintain such records hereby modifies the clause NAFI Property.

I-28. NAFI PROPERTY

(a) The Contractor shall sign a receipt for any property furnished by the NAFI and upon expiration of this contract shall return such property to the NAFI in the same condition as when received, except for fair wear and tear.

(b) Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.

(c) If property is received in a less than functional state or in a time frame which would delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at NAFI expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the NAFI, the Contracting Officer shall make a determination of the delay, if any, caused by the

NAFI, and the Contracting Officer shall make an equitable adjustment in accordance with paragraph (d).

(d) The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make an equitable adjustment from such expenses incurred by the contractor.

(e) After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the NAFI shall be paid the cost of repairs of damages or the fair market value of the property as determined by the Contracting Officer.

(f) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the NAFI. The right to any equitable adjustment shall be the Contractor's exclusive remedy. The NAFI shall not be liable for breach of contract for--

(1) Any delay in delivery of NAFI furnished property;

(2) Delivery of NAFI furnished property in a condition not suitable for its intended use,

(3) A decrease in or substitution of NAFI furnished property; or

(4) Failure to repair or replace NAFI property for which the NAFI is responsible.

I-29. COMMERCIAL WARRANTY

The contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and to not limit any rights afforded to the NAFI by any other clause of this contract.

I-30. PROTECTING THE NAFI'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT

(a) The Government suspends or debar Contractors to protect the Government/NAFI's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the NAFI's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I-31. CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Full text is available upon request.

I-32. TERMINATION FOR CONVENIENCE

The contracting officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI in accordance with BUPERINST 7043.1B. In the event of such termination, the contractor shall immediately stop all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work on the terminated portion(s) of the contract. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

I-33. DEFAULT (FIXED-PRICE CONSTRUCTION)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the NAFI may, by written notice to the Contractor, terminate the right to proceed with the work or the separable part of the work that has been delayed. In this event, the NAFI may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the NAFI resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the NAFI in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if:

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the NAFI and /or Government, in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the NAFI or with the government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for convenience of the NAFI.

(d) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-34. WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties in this contract, the contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the NAFI takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the NAFI takes possession.

(c) The Contractor shall remedy at the Contractor's expense any damage to NAFI or Government owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the NAFI shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the NAFI if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the NAFI, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the NAFI may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or

design furnished by the NAFI nor for the repair of any damage that results from any defects, gross mistakes, or fraud.

(j) This warranty shall not limit the NAFI's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

I-35. ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION

If this contract is performed in whole or in part on premises owned or under the control of the United States Government and/or the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents.

I-36. MODIFICATION PROPOSALS-PRICE BREAKDOWN

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit any analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, the justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

I-37. PAYMENT BY THIRD PARTY

(a) General. The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the NAFI, in accordance with the terms of this clause. The third party and, if applicable, the particular Government-wide commercial credit card to be used are identified elsewhere in this contract.

(b) Contractor payment request. In accordance with the clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the NAFI account with the third party, at the time and for the amount due in accordance with the terms of this contract.

(c) Payment. The Contractor and the third party shall agree that all payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the NAFI and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) Documentation. Documentation of each charge against the NAFI's account shall be provided to the Contracting Officer upon request.

(e) Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) Other payment terms. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, which is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

I-38. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the NAFI, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

I-39. REMOVAL OF CONTRACTOR'S EMPLOYEES

The Contractor agrees to utilize only experienced, responsive and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

I-40. SAVE HARMLESS

The Contractor shall save indemnify, save harmless and defend the NAF, its outlets and customer from any liability, claimed or established for violation or infringement of any copyright or trademark right asserted by a third party with respect to goods hereby ordered or any part thereof. Also the contractor shall at all times hold and save harmless the NAFI, its agents, representatives, and employees from any and all suits and expenses which rise out of acts or omissions of the contractor, its agents, or employees.

I-41. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I-42. DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR Parts 5, 6 and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or employees or their representatives.

I-43. CONTRACT TERMINATION-DEBARMENT

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract and for debarment as a Contractor and subcontractor.

I-44. DIFFERING SITE CONDITIONS

(a) The contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

(b) The Contracting Officer shall investigate the site conditions, promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

I-45. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work, or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the NAFI, as well as from drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the NAFI.

(b) The NAFI assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the NAFI. Nor does the NAFI assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers, employees, or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

I-46. OPERATIONS AND STORAGE AREAS

(a) The Contractor shall confine all operations (including storage of materials) on NAFI or Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government and the NAFI, its officers, employees, and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices, etc.) and utilities may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the NAFI. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the contractor at the contractor's expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, side walks, or roads.

I-47. CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the NAFI or the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

I-48. SUSPENSION OF WORK

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the NAFI.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified) an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of the final payment under the contract.

I-49. OTHER CONTRACTS

The NAFI or the Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with NAFI and Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or

permit any act that will interfere with the performance of work by any other contractor or by NAFI or Government employees.

I-50. NOTICE TO THE NAFI OF LABOR DISPUTES

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

I-51. IDENTIFICATION OF CONTRACTOR'S EMPLOYEES

(a) The Contractor without expense to the NAFI shall provide for each employee, working on this contract, an identification badge as may be approved and directed by the Contracting Officer. Each such employee shall be required to wear his badge upon his person at all times while on duty at the site of work or at other times and places where identification is required, and in such manner that it will be plainly visible as a means of identification. If required by the Contracting Officer, the Contractor shall obtain fingerprints and other means of identification for all such employees.

(b) In the event the NAFI desires registration of all employees working on this project, the Contractor shall cause them to be registered at such place and in such manner as the Contracting Officer may direct. Upon notification that registration is to be affected, the Contractor shall not permit any employee to work on the job site until such employee has completed the required registration.

I-52. SCHEDULES FOR CONSTRUCTION CONTRACTS

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work schedules for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take such steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the NAFI. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of the construction plan, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of the contract.

I-53. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

I-54. TIME EXTENSIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

I-55. INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

I-56. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

The Contractor will be required to (a) commence work under this contract within seven calendar days (unless otherwise specified within this contract) after the date of receipt by him of notice to proceed, (b) to prosecute work diligently, and (c) to complete the entire work, ready for use not later than the time specified in the terms of the contract. The time stated for completion shall include final clean up of the premises.

I-57. CLEAN AIR AND WATER (Applicable to contracts in excess of \$100,000)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means--

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharge by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees--

- (1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

I-58. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

I-59. SUPERINTENDENCE BY CONTRACTOR

At all times during the performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

I-60. USE AND POSSESSION PRIOR TO COMPLETION

(a) The NAFI or the Government shall have the right to take possession of any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the NAFI or the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall relieve the Contractor of responsibility for complying with the terms of the contract. The NAFI's or the Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the NAFI or the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the NAFI's or the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the NAFI or the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

I-61. AVAILABILITY AND USE OF UTILITY SERVICES

(a) The Government/NAFI shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government/NAFI or, where the Government/NAFI, at reasonable rates determined by the Contracting Officer, produces the utility. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges.

(c) Before final acceptance of the work by the Government/NAFI, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

I-62. APPRENTICES AND TRAINEES

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman

hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended.

I-63. PAYROLLS AND BASIC RECORDS

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is accurate and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.

I-64. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract

unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government/NAFI by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government/NAFI may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government/NAFI's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. The Contracting Officer will retain three sets (unless otherwise indicated) of all shop drawings and return the other set to the Contractor.

(h) This clause shall be included in all subcontracts at any tier.

I-65. LAYOUT OF WORK

The Contractor shall layout its work from established base lines and benchmarks indicated on the drawings furnished by the NAFI, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

I-66. DAVIS-BACON ACT

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the

Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a

determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I-67. WITHHOLDING OF FUNDS

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I-68. SUBCONTRACTS (LABOR STANDARDS)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

I-69. LABOR STANDARDS FOR CONSTRUCTION WORK--FACILITIES CONTRACTS

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses in performance of such work: (1) Contract Work Hours and Safety Standards Act-Overtime Compensation; (2) Davis-Bacon Act; (3) Withholding of Funds; (4) Payrolls and Basic Records; (5) Apprentices and Trainees; (6) Compliance with Copeland Act Requirements; (7) Subcontracts (Labor Standards); (8) Contract Termination-Debarment; (9) Compliance with Davis-Bacon and Related Act Regulations; (10) Disputes Concerning Labor Standards; and (11) Certification of Eligibility.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

I-70. ANTI-KICKBACK PROCEDURES

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime

contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from-

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government/NAFI unless the Government/NAFI has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I-71 PERFORMANCE AND PAYMENT BONDS

(a) Definitions. As used in this clause –

"Original contract price" means the award price of the contract; or for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Within ten (10) calendar days after the contractor receives notification of contract award, the Contractor shall obtain and submit to the Contracting Officer two (2) bonds (namely "Performance" and "Payment" Bonds, each with good and sufficient surety or sureties acceptable to the Fund.

(c) If the contractor, upon acceptance of its bid or proposal by the fund within the period specified for acceptance, fails to execute all contractual documents or give performance and payment bonds as required by the contract within the time specified, the Contracting Officer may terminate the contract for default.

(d) Navy regulation applicable to Nonappropriated funds require performance and payment bonds for any construction contract exceeding \$100,000 unless an applicable waiver applies. The Contractor shall furnish to the Fund a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A) within 10 days after award of contract before receiving a Notice to Proceed with the work or being allowed to start work. The Bonds shall include a statement that states that "The term United States of America, as set forth in this bond form shall mean the United States Nonappropriated Fund Instrumentality (herein after referred to as the *Navy, Morale, Welfare, and Recreation Fund*) which is a party to this contract." The penal sums of such bonds shall be as follows:

(1) Performance Bonds (Standard Form 25): The penal sum of the performance bonds at the time of contract award shall be 100% of the original contract price.

(2) Payment Bonds (Standard Form 25A): The penal sum of the payment bonds at the time of contract award shall be 100% of the original contract price.

(3) Additional bond protection

(i) The NAFI may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The NAFI may secure the additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(e) Corporate sureties offered for bonds furnished with your award contract must appear on the list contained in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies". Treasury Circular 570 is published in the Federal Register or may be obtained from the web site from the Department of the Treasury.

The penal amount of the bond should not exceed the surety's underwriting limit, the bond will be acceptable only if (i) the amount which exceeds the specified limit is coinsured or reinsured and (ii) the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

(f) Individual sureties will not be acceptable under the requirements of this contract.

(g) Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

I-72. RESERVED

I-73. STOP-WORK ORDER

(a) The contracting officer may, at any time, by written order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the contractor, and for any further period to which the parties may

agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer shall either –

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience, clause of this contract.

(b) If a stop-work order issued under this clause is cancelled or the period of the order any extension thereof expires, the contractor shall resume work. The contracting officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing. Accordingly, if –

- (1) The stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not cancelled and the work covered by the order is terminated for the convenience of the NAFI, the contracting officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not cancelled and the work covered by the order is terminated for default, the contracting officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

I-74. PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(a) The NAFI shall pay the contract price as provided in this contract.

(b) The NAFI may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site may also be taken into consideration if--

- (1) Consideration is specifically authorized by this contract; and
- (2) The Contractor furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)
(Title)
(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the NAFI an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the NAFI and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the NAFI, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the NAFI to require the fulfillment of all of the terms of the contract.

(g) In making these progress payments, the NAFI shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(h) The NAFI shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the NAFI arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the

operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the assignment of Claims clause of this contract.

(i) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in BUPERSINST 7043.1B, including contract modifications for additional supplies, services or construction, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

I-75. PRECONSTRUCTION CONFERENCE

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

I-76. BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government/NAFI contract numbers and contracting offices for all Government/NAFI contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I-77. CONTRACTING OFFICER AUTHORITY

In no event shall any understanding or agreement between the Contractor and any Government/NAFI employee other than the Contracting Officer on any contract, modification, change order, letter or verbal direction to the Contractor be effective or binding upon the NAFI. All such actions must be formalized by a proper contractual document executed by an appointed Contracting Officer. The Contractor is hereby put on notice that in the event a Government/NAFI employee other than the Contracting Officer directs change in the work to be performed or increases the scope of work to be performed, it is the Contractor's responsibility to make inquiry of the Contracting Officer before making the deviation. Payments will not be made without being authorized by an appointed Contracting Officer with the legal authority to bind the NAFI.

I-78. ORDER OF PRECEDENCE

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: (1) the Schedule (excluding the specifications), (2) Representations and Other Instructions, (3) Contract Clauses, (4) Section C – Specifications and Work Statement, and (5) Other Documents, Exhibits and Attachments.

Alternate 1 (add to GSA task orders)

Should this delivery order contain clauses that duplicate or contradict those in the GSA contract, the Contractor agrees by accepting this order that the clauses in this order prevail.

I-79. DESIGN WITHIN FUNDING LIMITATIONS

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in paragraph (c) below. When offers or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the NAFI if the unfavorable offers or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer shall review the Contractor's revised estimate of construction cost. The NAFI may, if it determines that the estimated construction contract price set forth in this contract is so low that the award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) below, or the NAFI may adjust such estimated construction contract price. When offers or proposals are not solicited or are unreasonably delayed, the NAFI shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of offers or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is \$_____ (insert appropriate amount) exclusive of the cost of furniture and portable equipment.

I-80. RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the NAFI's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the NAFI in accordance with applicable law for all damages to the NAFI caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the NAFI provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

I-81. WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

I-82. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

I-83. PRIVACY ACT NOTIFICATION

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violations of the Act may involve the imposition of criminal penalties.

I-84. PRIVACY ACT

(a) The Contractor agrees to-

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I-85. PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract that meet the standards of quality established under this

contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; provided, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the NAFI, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the NAFI arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract to include contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

I-86. PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

(1) *Due date.* The due date for making invoice payments shall be—

(i) For work or services completed by the Contractor, the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(iii) of this clause).

(B) The 30th day after Government/NAFI acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government/NAFI approval of Contractor estimates of work or services accomplished.

(iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 30th day after the date of the Contractor's invoice or payment request, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause:

- (i) Name and address of the Contractor.
- (ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)
- (iii) Contract number or other authorization for work or services performed (including order number and contract line item number).
- (iv) Description of work or services performed.
- (v) Delivery and payment terms (e.g., prompt payment discount terms).
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.
- (viii) Any other information or documentation required by the contract.
- (ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) *Interest penalty.* An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government/NAFI offices are closed and Government/NAFI business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

- (i) The designated billing office received a proper invoice.
- (ii) A receiving report or other Government/NAFI documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(4) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611, however other provisions of the Act are not applicable to NAFIs – see Disputes Clause) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the NAFI until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the

prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government/NAFI acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(4)(i)(A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government/NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government/NAFI acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government/NAFI approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the NAFI and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause entitled Disputes.

(5) *Prompt payment discounts.* An interest penalty also shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) *Additional interest penalty.*

(i) A penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)

(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)

(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except—

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments*—

(1) *Due dates for recurring financing payments.* If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) *Due dates for other contract financing.* For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment

shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.

END OF SECTION I